

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

ROBERT SARVIS

Plaintiff,

Vs.

POLYVORE, INC.

Defendant.

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Civil Case No. _____

COMPLAINT

The Plaintiff, Robert Sarvis, brings this complaint against, the Defendant, Polyvore, Inc. ("Polyvore") for declaratory judgment, injunction, and copyright infringement.

JURISDICTION AND VENUE

1. This is an action for declaratory judgment of infringement of copyrights and copyright infringement under United States Registrations. The action arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the copyright laws of the United States, 17 U.S.C. § 101 et seq.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1346, and 1338.

THE PARTIES

3. Robert Sarvis ("Plaintiff") is an individual residing in Nantucket, Massachusetts.

4. Polyvore, Inc. ("Defendant") is a company with its headquarters at 100 View Street, Suite 101, Mountain View, California, 94041.

INTRODUCTORY FACTS

5. Robert Sarvis is the assignee of copyrights of the art and copyrights of Sheila Wolk.
6. Sheila Wolk's art is internationally known for fantasy images and sports art. Her art is distinctive and well known. It is licensed by many manufactures; it is included in museum collections; and it has been featured in multiple art publications.
7. On or about October 12, 2012 Robert Sarvis notified Polyvore that its users were infringing upon the Sheila Wolk art assigned to him. In his notification he provided a representative sample of the infringed art which listed twenty (20) different and distinct images (referred herein as the "Images") that were infringed (See Exhibit AA attached hereto).
8. The Notification, Exhibit AA, complied with the notification requirements set forth in the Digital Millennium Copyright Act of 1998 ("DMCA") - 17 USCS §512 (c)(3).
9. The users (the "Users") of Polyvore have displayed, copied, modified and otherwise used the Images on its site in direct violation of the registered copyrights.
10. Polyvore is international peer-to-peer web site and a service provider as defined by the DMCA - 17 USCS §512(k)(1)(B).

11. Polyvore provides its Users at no cost and as apart of the overall Polyvore system the ability to up-load works of art and then edit those works of art, which includes, but is not limited to, the ability remove or hide copyrights, modify the image, and create other works of art or images by incorporating the original works in whole or in part.
12. Users of the Polyvore web site and system have up-loaded the Images and then have edited them to remove copyrights and have used in whole and/or in part the Images to form new images.
13. Using the Polyvore system Users have removed the copyrights from the Images and claimed the Images or the transformed art using the Images in whole or in part as their own.
14. At no time have the Users licensed the Images for display, copying, distribution, or use in anyway.
15. At no time has Polyvore licensed the Images for display, copying, distribution, or use in anyway.
16. At no time has Robert Sarvis or Sheila Wolk given Polyvore or the Users any right to use, display, copy, or distribute the Images.
17. At all times Polyvore is involved in commercial activities and receives direct financial benefit from its activities.
18. Polyvore having been duly notified on or about October 12, 2012 has failed to expeditiously remove all the infringed Images from its web site.

19. Polyvore has willfully displayed, copied, prepared derivative works, and distributed the Images in violation of the Copyright Act, 17 U.S.C. § 101 et seq.
20. Defendant Polyvore has actively and willfully engaged in direct, contributory, and vicarious copyright infringement.

COUNT I

Declaratory Judgment

21. Plaintiff repeats the averments in paragraphs 1-20 above as if fully set forth herein.
22. Polyvore's unauthorized display, copying, preparation of derivative works, distribution, and use of the Images are infringements of registered copyrights.
23. There is an actual controversy between the parties.
24. Plaintiff is entitled to declaratory judgment of Plaintiff's rights, specifically, that Polyvore has infringed upon the copyrights.

COUNT II

Permanent Injunction

25. Plaintiff repeats the averments in paragraphs 1-24 above as if fully set forth herein.
26. The Copyright Act 17 U.S.C.S. § 502(a) provides for injunctive relief for copyright infringement.

27. The acts of Polyvore in violation of the Copyright Act are basis for the grant of injunctive relief to stop the continued unauthorized display, copying, preparation of derivative works, and distribution of the Images.

COUNT III

Direct Infringement

28. Plaintiff repeats the averments in paragraphs 1-27 above as if fully set forth herein.

29. Polyvore has copied, displayed and/or distributed the Images without license or approval in direct violation of the registered copyrights.

30. The acts of Polyvore are at all times done knowingly and willfully.

31. As a direct result of Polyvore's direct infringement the Plaintiff has been damaged in an amount to be proven at trial, but herein is alleged to be \$3,000,000.

COUNT IV

Contributory Copyright Infringement by Polyvore

32. Plaintiff repeats the averments in paragraphs 1-31 above as if fully set forth herein.

33. Polyvore system distributes free software that allows computer users to share electronic files, namely art images and videos, through peer-to-peer networks.

34. Polyvore also allows users to store images and videos on its servers.

35. Polyvore's system allows its users to modify, cut and paste, remove or hide copyright marks, and form secondary images by incorporating the Images in whole or in part.

36. Polyvore's clients, its Users, have displayed, modified, copied and distributed the Images on Polyvore's web site without approval of the Plaintiff in direct violation of the copyrights.

37. Polyvore promotes, allows, and provides the means and technology for users to copy, distribute, remove copyrights, and transform images on its site.

38. At all times Polyvore reasonably knows and/or has constructive knowledge that its file sharing site is being used to infringe on artists' copyrighted images in general, and the Sheila Wolk copyrights in particular.

39. As of or about October 12, 2012 Polyvore had actual and specific knowledge via the Plaintiff's DMCA compliant notice that the Images were displayed and distributed on its site without the Plaintiff's permission or license and in violation of the registered copyrights.

40. As of the date of this complaint the Images continue to be displayed on Polyvore's website without authorization and license.

41. Upon obtaining knowledge and awareness that the Images were being infringed upon Polyvore failed to act expeditiously to remove, or disable access to the Images.

42. Upon receipt of the Plaintiff's notification Polyvore was aware of the specific facts and/or circumstances of their infringing activity.

52. Polyvore at all times has the right and ability to control the infringement of its users.

53. As a direct result of Polyvore's vicarious infringement the Plaintiff has been damaged in an amount to be proven at trial, but herein is alleged to be in excess of \$3,000,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment in its favor as follows:

1. A declaration that the Polyvore's use of the Images was an infringement of Plaintiff's registered copyright pursuant to 17 U.S.C. § 501.
2. Enjoin Polyvore from further infringement of the Images pursuant to 17 U.S.C.S. § 502(a).
3. Award damages in the amount of \$3,000,000 for the willful infringement by Polyvore of the registered copyrights.
4. For costs of suit, and
5. Such other and further relief as this Court deems just and proper.

DATED: November 26, 2012

By: 

Robert Sarvis, Pro Se
11 Vesper Lane
Nantucket, MA 02554
603-540-4882
rhsarvis@comcast.net

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial in this action.

DATED: November 26, 2013

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